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EXAMINER
PARTON, KEVIN S

ART UNIT	PAPER NUMBER
2153	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/492,154	Applicant(s) UEDA ET AL.	
	Examiner Kevin Parton	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-17 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 27 January 2000 is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to because figures 9, 11, 12, 13, 14, 15, 16, 17, 18, and 19 have no reference numbers for use in the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-8, 12, 13, 15, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Vellanki et al. (USPN 5,999,979).

4. Regarding claim 1, Vellanki et al. (USPN 5,999,979) et al. teach a system for data transfer comprising:

a. An attribute information acquiring unit acquiring attribute information of data managed by an equipment connected to a network (column 6, lines 5-10, 21-23, 25-27). Note that in the reference, the client gathers the protocol "attributes" from the data provider, the server.

b. A transfer selecting unit selecting a method of data transfer based on the attribute information of data acquired by the attribute information acquiring unit (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

c. A data receiving unit receiving data by the method of transfer selected by the transfer selecting unit (column 6, lines 25-27). Once the client sets up the best protocol, the requested data communication is received from the server.

5. Regarding claim 2, Vellanki et al. (USPN 5,999,979) et al. teach all the limitations as applied to claim 1. They further teach means wherein the data receiving unit receives data by a plurality of physical layers (column 6, lines 64-66). Note that in the reference, the client can set up communications in parallel using multiple separate connections, each is a separate physical layer.

6. Regarding claim 3, Vellanki et al. (USPN 5,999,979) teach all the limitations as applied to claim 1. They further teach means wherein the transfer selecting unit includes a protocol selecting unit selecting a protocol based on the attribute information of data acquired by the attribute information acquiring unit (column 6, lines 25-35). Note that in the reference, the client

receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

7. Regarding claim 4, Vellanki et al. (USPN 5,999,979) teach all the limitations as applied to claim 1. They further teach means wherein the transfer selecting unit includes a command set selecting unit selecting a command set based on the attribute information of data acquired by the attribute information acquiring unit (column 6, lines 25-35). Since in the reference, a protocol is chosen, the command set corresponding to that protocol would have to be used. A command set is inherent in the selection of a protocol.

8. Regarding claim 5, Vellanki et al. (USPN 5,999,979) teach a system for data transfer comprising:

a. An attribute information acquiring unit acquiring attribute information of data managed by an equipment connected to a network (column 6, lines 5-10, 21-23, 25-27). Note that in the reference, the client gathers the protocol "attributes" from the data provider, the server.

b. A transfer selecting unit selecting a method of data transfer based on the attribute information of data acquired by the attribute information acquiring unit (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

c. A data transmitting unit transmitting data by the method of transfer selected by the transfer selecting unit (column 6, lines 25-27). Note that in the

reference, the protocol chosen by the client will be used for both receipt and transmission of data.

9. Regarding claim 6, Vellanki et al. (USPN 5,999,979) teach all the limitations as applied to claim 5. They further teach means wherein the data transmitting unit transmits data by a plurality of physical layers (column 6, lines 64-66). Note that in the reference, the client can set up communications in parallel using multiple separate connections, each is a separate physical layer.

10. Regarding claim 7, Vellanki et al. (USPN 5,999,979) teach all the limitations as applied to claim 5. They further teach means wherein the transfer selecting unit includes a protocol selecting unit selecting a protocol based on the attribute information of data acquired by the attribute information acquiring unit (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

11. Regarding claim 8, Vellanki et al. (USPN 5,999,979) teach all the limitations as applied to claim 5. They further teach means wherein the transfer selecting unit includes a command set selecting unit selecting a command set based on the attribute information of data acquired by the attribute information acquiring unit (column 6, lines 25-35). Since in the reference, a protocol is chosen, the command set corresponding to that protocol would have to be used. A command set is inherent in the selection of a protocol.

12. Regarding claims 12 and 15, Vellanki et al. (USPN 5,999,979) teach a system for data transfer with means for:

a. Acquiring attribute information of data managed by an equipment connected to a network (column 6, lines 5-10, 21-23, 25-27). Note that in the reference, the client gathers the protocol "attributes" from the data provider, the server.

b. Selecting a method of data transfer based on the acquired attribute information of data (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

c. Receiving data by the selected method of transfer (column 6, lines 25-27). Once the client sets up the best protocol, the requested data communication is received from the server.

13. Regarding claim 13 and 16, Vellanki et al. (USPN 5,999,979) teach a system for data transfer with means for:

a. Acquiring attribute information of data managed by an equipment connected to a network (column 6, lines 5-10, 21-23, 25-27). Note that in the reference, the client gathers the protocol "attributes" from the data provider, the server.

b. Selecting a method of data transfer based on the acquired attribute information of data (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

c. Transmitting data by the selected method of transfer (column 6, lines 25-27). Note that in the reference, the protocol chosen by the client will be used for both receipt and transmission of data.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. Claims 9-11, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vellanki et al. (USPN 5,999,979) in view of Asano (USPN 5,881,240).

16. Regarding claim 9, Vellanki et al. (USPN 5,999,979) teach a system for data transfer comprising:

a. An equipment attribute information acquiring unit acquiring attribute information of an equipment connected to a network (column 6, lines 5-10, 21-23, 25-27). Note that in the reference, the client gathers the protocol "attributes" from the data provider, the server.

b. An equipment attribute information selecting unit selecting attribute information of first and second equipments among equipment attribute information acquired by the equipment attribute information acquiring unit (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

Although the system disclosed by Vellanki et al. (USPN 5,999,979) shows substantial features of the claimed invention, it fails to disclose:

a. A data attribute information acquiring unit acquiring attribute information of data managed by the first equipment selected by the equipment attribute information selecting unit.

b. A transfer selecting unit selecting a method of data transfer based on the attribute information of data acquired by the data attribute information acquiring unit and on attribute information of the second equipment.

c. A data transfer instructing unit instructing data transfer from the first equipment to the second equipment by the transfer method selected by the transfer selecting unit.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Vellanki et al. (USPN 5,999,979), as evidenced by Asano (USPN 5,881,240).

In an analogous art, Asano discloses a system for determining data transfer rates comprising:

a. A data attribute information acquiring unit acquiring attribute information of data managed by the first equipment selected by the equipment attribute information selecting unit (figure 5; abstract). Note that in the reference, the transmitting apparatus retrieves attribute information about the receiver, specifically, the maker's name and the content of the data.

b. A transfer selecting unit selecting a method of data transfer based on the attribute information of data acquired by the data attribute information acquiring unit and on attribute information of the second equipment (figure 5;

abstract). Note that in the reference, the transmitting device selects a speed based on the speed and content of the response.

c. A data transfer instructing unit instructing data transfer from the first equipment to the second equipment by the transfer method selected by the transfer selecting unit (figure 5). Note that in the reference, data is transferred at the speed selected by the transmitter.

Given the teaching of Asano (USPN 5,881,240), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Vellanki et al. (USPN 5,999,979) by employing the determination of both the optimum protocol and transmission speed for data. This allows for the increased performance of the protocol to be supplemented with the fastest possible transmission. The result will benefit the system by delivering data as quickly and as easily handled as possible.

17. Regarding claim 10, Vellanki et al. (USPN 5,999,979) teach all the limitations as applied to claim 9. They further teach means wherein the transfer selecting unit selects a protocol based on the attribute information of data acquired by the data attribute information acquiring unit (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

18. Regarding claim 11, Vellanki et al. (USPN 5,999,979) teach all the limitations as applied to claim 9. They further teach means wherein the transfer selecting unit selects a command set based on the attribute information of data acquired by the data attribute information acquiring unit (column 6, lines 25-35). Since in the reference, a protocol is chosen, the command set

corresponding to that protocol would have to be used. A command set is inherent in the selection of a protocol.

19. Regarding claims 14 and 17, Vellanki et al. (USPN 5,999,979) teach a system for data transfer with means for:

a. Acquiring attribute information of an equipment connected to a network (column 6, lines 5-10, 21-23, 25-27). Note that in the reference, the client gathers the protocol "attributes" from the data provider, the server.

b. Selecting attribute information of first and second equipments from the attribute information of equipments (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

c. Selecting a method of transfer based on the equipment attribute (column 6, lines 25-35). Note that in the reference, the client receives a number of protocols (or attributes) to choose from and it chooses the most advantageous for communication.

d. Instructing data transfer from the first equipment to the second equipment by the selected method of transfer (column 6, lines 25-27). Note that in the reference, the protocol chosen by the client will be used for both receipt and transmission of data.

Although the system disclosed by Vellanki et al. (USPN 5,999,979) shows substantial features of the claimed invention, it fails to disclose means for:

a. Acquiring attribute information of data managed by the selected first equipment.

b. Selecting a method of data transfer based on the acquired attribute information of data and the attribute information of the second equipment.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Vellanki et al. (USPN 5,999,979), as evidenced by Asano (USPN 5,881,240).

In an analogous art, Asano discloses a system for determining data transfer rates comprising:

a. Acquiring attribute information of data managed by the selected first equipment (figure 5; abstract). Note that in the reference, the transmitting apparatus retrieves attribute information about the receiver, specifically, the maker's name and the type of data.

b. Selecting a method of data transfer based on the acquired attribute information of data and the attribute information of the second equipment (figure 5; abstract). Note that in the reference, the transmitting device selects a speed based on the speed and content of the response.

Given the teaching of Asano (USPN 5,881,240), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Vellanki et al. (USPN 5,999,979) by employing the determination of both the optimum protocol and transmission speed for data. This allows for the increased performance of the protocol to be

supplemented with the fastest possible transmission. The result will benefit the system by delivering data as quickly and as easily handled as possible.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see the following:

a. Ramanathen et al. (USPN 5,913,041) – A system for determing data rates based on past communication with the device.

b. Zhou et al. (USPN 6,178,456) – A system for selecting the optimum data rate between a client and a service provider.

c. Ravi et al. (USPN 6,292,834) – Multimedia dynamic bandwidth selection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Parton whose telephone number is (703)306-0543. The examiner can normally be reached on M-F 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703)305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-9242 for regular communications and (703)746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

Kevin Parton
Examiner
Art Unit 2153

ksp
November 1, 2002

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